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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment	CS Docket No. 95-184
In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring	MM Docket No. 92-260

REQUEST OF DIRECTV, INC. TO FILE COMMENTS ONE DAY LATE

DIRECTV, Inc. ("DIRECTV") respectfully submits the attached comments in response to the Commission's *Report and Order and Second Notice of Proposed Rulemaking*, FCC 97-376 (rel. Oct. 17, 1997) ("*Inside Wiring Order*") in the above-captioned proceeding and requests that the Commission accept these comments for filing one day late. Attorneys for DIRECTV worked diligently to file these comments on December 23, 1997. However, because of logistical difficulties in photocopying and unusually heavy holiday traffic, the messenger delivering these comments did not arrive at the Commission until approximately 5:36 p.m., six minutes after the Commission closed for the evening. DIRECTV is submitting these comments in the early morning of December 24, 1997, and affirms that neither DIRECTV nor its attorneys have obtained copies of the comments of other parties filed in response to the *Inside Wiring Order*. Accordingly, DIRECTV respectfully requests that the Commission accept these comments as filed.

Respectfully submitted,

DIRECTV, Inc.

Nandan M. Joshi

By: James F. Rogers
Nandan M. Joshi
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004-2505

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COMMENTS OF DIRECTV, INC.

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1001 Pennsylvania Avenue, N.W., Suite 1300
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December 23, 1997

SUMMARY

DIRECTV, Inc. ("DIRECTV") urges the Commission to adopt rules that strike down exclusivity provisions in service contracts between owners of multiple dwelling units ("MDUs") and local cable providers. Because of their market power, cable operators are able to obtain long-term and even perpetual exclusive contracts from MDU owners, thus foreclosing competition within the affected MDUs for years, if not indefinitely. Exclusivity provisions in favor of the local cable incumbent constitute a barrier to competition by alternative multichannel video programming distributors ("MVPDs"), in violation of established Congressional and Commission policies favoring MVPD competition. Section 207 of the Telecommunications Act of 1996 and the Commission's general powers provide ample authority for the Commission to declare that cable exclusive contracts are unenforceable.

DIRECTV also urges the Commission to adopt rules to provide the MDU owner with the right to require the cable incumbent to allow alternative MVPDs to share cable-owned inside wiring. Mandated sharing is necessary to ensure that alternative MVPDs have the practical ability to serve MDU residents. With respect to the direct broadcast satellite ("DBS") service, sharing will not cause any harmful interference to the cable signal because DBS frequencies do not overlap with cable frequencies. In fact, sharing of wiring occurs today in a number of MDUs in which the MDU owner owns its inside wiring. Accordingly, DIRECTV urges the Commission to adopt rules to mandate sharing of wiring where technically feasible.

TALE OF CONTENTS

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I. INTRODUCTION

DIRECTV provides direct broadcast satellite ("DBS") service to more than 3 million subscribers nationwide.[1] Using three high-powered DBS satellites collocated at 101° W.L., DIRECTV offers approximately 175 channels of digitally-delivered entertainment, educational, and informational programming directly to homes and businesses equipped with the DSS® receiving system, which features a satellite dish antenna only 18 inches in diameter.

1 DIRECTV is a wholly-owned subsidiary of DIRECTV Enterprises, Inc., a DBS licensee.

When DIRECTV first launched its DBS-1 satellite four years ago -- the culmination of ten years and $750 million worth of effort and investment -- DIRECTV was dedicated to providing consumers with an MVPD alternative to incumbent cable television operators. Because of DIRECTV's dedication -- and Commission policies designed to foster competition in the distribution of video programming -- DIRECTV has become the leading provider in a service that has proven to be the most effective competitor to cable television to date.

DIRECTV's efforts to bring competition to viewers include a substantial investment in providing DBS service to MDU residents. DIRECTV has made substantial investments to promote and establish service in MDUs across the country and expects to increase the level of its investment in 1998. Additional business development, sales and specialized customer service staff have been added who focus exclusively on the MDU market. DIRECTV has established offices dedicated to MDU sales in New York, Atlanta, Chicago, Los Angeles, and Dallas.

DIRECTV has contracted with more than 200 system operators nationwide to sell, install, and maintain DIRECTV signal distribution networks within MDUs. These system operators include satellite installation companies, private cable operators, and wireless cable (MMDS) operators. As a result of DIRECTV's efforts, its system operators to date have "wired" 14,500 MDU units to receive DIRECTV service and have contracted to provide service to 95,000 additional units.

Despite the gains that DIRECTV has made in penetrating the MDU market, the number of MDU units that DIRECTV serves is only a small portion of the number of units that could be open to MVPD competition. Even where DIRECTV is able to demonstrate to an MDU owner that DIRECTV offers a superior service and a better value, impediments exist that prevent the MDU owner from selecting DIRECTV service. Two serious impediments to the ability of DIRECTV to compete in MDUs are exclusive service contracts between MDU owners and the local cable providers and the inability of DIRECTV to share existing MDU wiring owned by the cable company.

Exclusive contracts between an MDU owner and the local cable incumbent constitute a legal barrier to competitive entry by alternative MVPDs. By definition, such exclusive contracts allow only the cable incumbent to provide service to an MDU during the term of the contract. Many MDU owners enter into exclusive contracts because of the coercive market power of the local cable operator, and then are barred by these contracts from switching video service providers or providing their residents a choice of providers.[2] Moreover, because cable incumbents are able to use their market power to obtain long-term and even perpetual contracts from the MDU owner, it may be years (if ever) before the owner and residents of an MDU are able to obtain video services from the provider of their choice. Preventing cable operators from enforcing the exclusivity provisions in their contracts with MDU owners will eliminate a legal barrier to competition and will give MDU owners the ability to obtain video services from alternative MVPDs on a competitive basis.

Barring cable incumbents from enforcing exclusivity clauses, however, removes only a legal impediment to competition. Competition in most MDUs cannot develop unless the alternative MVPD is provided access to the MDU's inside wiring. Unless alternative MVPDs

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[2] Owners that attempt to invite competition in the face of an exclusivity provision face the prospect of expensive litigation by the cable incumbent.

are permitted to share wiring with the cable incumbent, they must overbuild existing wiring if they wish to provide service to an MDU. Because MDU inside wiring generally is embedded within the MDU structure, overbuilding could disrupt the lives of MDU residents and could raise aesthetic concerns for the MDU owner. In many cases, these concerns may deter an MDU owner from permitting entry by an alternative MVPD, thus giving the cable incumbent a *de facto* exclusive contract. To address this concern and promote competition in MDUs, the Commission should adopt rules that allow an MDU owner the right to require the cable incumbent to share the MDU's existing inside wiring.

High-power DBS signals and cable signals can be transmitted simultaneously across a single wire without causing any harmful interference to the cable signal. The reason is simple: DBS signals operate at higher frequencies than cable signals, and these frequencies do not overlap.[3] In fact, sharing of wiring occurs today in a number of MDUs in which the MDU owner owns its inside wiring. However, where the cable incumbent owns the inside wiring, it is unlikely to provide competitive DBS providers with access to the inside wiring in order to provide service to an MDU. Commission action is necessary to ensure that alternative MVPDs have the practical ability to provide competitive video programming services to MDUs. Accordingly, DIRECTV urges the Commission to adopt rules to mandate sharing of wiring where technically feasible.

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3 Sharing of wiring should be feasible whenever any two signals operate at non-overlapping frequencies. Because DIRECTV's experience with sharing is limited to high-power DBS signals, these comments will refer only to sharing of wiring between DBS and cable.

II. THE COMMISSION SHOULD PREVENT CABLE INCUMBENTS FROM ENFORCING EXCLUSIVITY PROVISIONS IN THEIR CONTRACTS WITH MDU OWNERS

A. CABLE'S MARKET POWER HAS ENABLED IT TO EXCLUDE COMPETITION IN MDUs

The Commission and Congress repeatedly have found that cable possesses market power with respect to the distribution of video programming.[4] That market power extends to MDUs; of the approximately 31.5 million individual units nationwide, the vast majority receive their video programming through the local cable provider.[5]

Cable operators are able to maintain their market power with respect to MDUs in large part because they have entered into exclusive contracts with many of the MDU owners whose properties they serve. These contracts prevent the MDU owner from permitting any video service provider other than the incumbent cable company to provide service to any MDU resident for the term of the contract.[6] *See* Statement of Patrick J. Cunningham ("Cunningham Statement"), attached as Appendix A, at ¶ 4; Statement of Gary Willey ("Willey Statement"), attached as Appendix B, at ¶ 3; Statement of David E. Lane ("Lane Statement"), attached as Appendix C, at ¶ 6. Because of cable's market power, these contracts often contain lengthy terms. Typical contracts include ten to fifteen year terms with automatic renewal provisions.

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4 *See, e.g.*, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Third Annual Report*, CS Docket No. 96-133, FCC 96-496, at ¶¶ 4, 128; Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2, 106 Stat. 1460, *codified at* 47 U.S.C. § 521 note.

5 Telecommunications Services Inside Wiring, Customer Premises Equipment, *Further Notice of Proposed Rulemaking*, CS Docket No. 95-184, FCC 97-304, at ¶ 26 (rel. Aug. 28, 1997) ("*Further Notice*"); *see also* Paul Seredynski, *Downlink: Direct Broadcast Satellite Service*, Video Magazine, Jan. 1997, at 16.

6 Many of these contracts were executed before DBS service became an option for MDU owners.

Some of these contracts are perpetual, *i.e.*, they remain in force for as long as the cable incumbent maintains its franchise. Cunningham Statement at ¶ 4; Lane Statement at ¶ 4. Because of cable's market power, an MDU owner that wishes to provide multichannel programming to its residents is forced to deal with the cable operator and accept the operator's terms.

In many cases, MDU owners that enter into these exclusive contracts with the local cable operator become dissatisfied with their service, determine that another MVPD can provide them with a better value, or simply wish to provide their residents with a choice of more than one video programming distributor. Alternatively, MDU residents may demand that an MDU owner provide them with a particular programming service. DIRECTV is aware of many instances in which an MDU owner expressed an interest in providing its residents with DIRECTV service, but decided not to do so out of fear of litigation with the cable incumbent with respect to an exclusivity provision. In many instances, the cable incumbent affirmatively will threaten action against an MDU owner that is seeking a relationship with DIRECTV. Cunningham Statement at ¶¶ 5-6; Lane Statement at ¶ 3. In either event, the MDU owner is deterred from switching or adding providers because of the exclusivity provision in its contract with the cable operator.[7]

In this way, exclusive contracts act as a barrier to competition and consumer choice and violate long-standing Congressional and Commission policy designed to encourage

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7 MDU owners often require the alternative MVPD to indemnify them against damages and costs (including attorneys' fees) resulting from any claim by the cable company that allowing the alternative MVPD to serve the building is a violation of an exclusivity provision in the MDU owner's contract with the cable company. *See* Cunningham Statement at ¶ 6.

competition from alternative MVPDs.[8] To eliminate this barrier to competition and consumer choice, the Commission should adopt rules that will prevent cable operators from enforcing exclusivity provisions in their contracts with MDU owners.[9] Adopting such rules is consistent with Commission policy of promoting competition in the MVPD market. MDU owners that have been coerced by cable's market power to enter into these contracts would be able to switch video service providers without fearing the possibility of litigation by the incumbent cable operator. Moreover, a straightforward ban on the enforceability of cable exclusivity provisions will promote competition by providing MDU owners with certainty with respect to their right to seek alternative MVPD services.[10] Most importantly, a ban on cable exclusive contracts will spur competition among all MVPDs, resulting in better service and greater choice for all consumers of video programming.

B. THE COMMISSION HAS THE AUTHORITY TO STRIKE DOWN EXCLUSIVITY PROVISIONS THAT IMPEDE COMPETITION

The Commission has ample authority to adopt rules to strike down exclusivity provisions that prevent consumers from selecting their preferred video service provider. Section 207 of the Telecommunications Act of 1996 requires the Commission to "promulgate regulations

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8 *See, e.g.*, Communications Act of 1934, §§ 601(6), 628(b), 47 U.S.C. §§ 521(6), 548; *Further Notice* at ¶ 2.

9 DIRECTV is not opposed to exclusive contracts in all circumstances. Exclusive contracts are a necessary and procompetitive tool for MVPDs without market power, such as DBS and other alternative MVPDs, to gain entry into a market. *See Standard Oil Co. v. United States*, 337 U.S. 293, 307 (1949). But where an industry with market power, such as the cable industry, enters into exclusivity provisions, it can have a detrimental effect on competition in the market. *See Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 45 (1984) (O'Connor, J., concurring).

10 *See Further Notice* at ¶ 40.

to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of . . . direct broadcast satellite service."[11] The legislative history makes clear that the Commission's authority under this provision extends to private contracts.[12] Under Section 207, the Commission has adopted rules to preempt any "state or local law or regulation . . . or any private covenant, homeowners' association rule or similar restriction on property . . . that impairs the installation, maintenance, or use of [a DBS antenna],"[13] and already has used those rules to strike down offending restrictions, both public and private.[14] Exclusive contracts between cable operators and MDU owners that impair the ability of MDU residents to subscribe to alternative MVPDs are yet another form of private restriction and are within the purview of Section 207. Indeed, that Section not only authorizes but directs the Commission to take the action proposed here.

The Commission's authority to void cable exclusivity provisions also arises from its statutory mandate "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, nationwide and world-wide wire and radio communication service."[15] The Commission has long used this authority to void a variety of actions that violate the policies of

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11 Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 114, *codified at* 47 U.S.C. § 303 note.

12 H. Rep. No. 204, 104th Cong., 1st Sess. 124 (1995).

13 47 C.F.R. § 1.4000.

14 *See, e.g.*, Wireless Broadcasting Systems of Sacramento, Inc., *Memorandum Opinion and Order*, CSR 5001-0, DA 97-2506 (Nov. 28, 1997) (preempting homeowners' association restriction on antennas); Star Lambert and Satellite Broadcasting and Communications Association of America, *Memorandum Opinion and Order*, CSR 4913-0, DA 97-1554 (July 22, 1997) (preempting Meade, Kansas ordinance restricting installation and placement of antennas).

15 47 U.S.C. § 151.

the Communications Act (the "Act"). For example, even before the adoption of Section 207 of the Telecommunications Act, the Commission preempted state and local laws that imposed "unrealistic burdens on the installation of satellite antennas."[16] Similarly, this general authority to implement the Act's polices provides the Commission with authority to strike down exclusivity provisions in cable-MDU contracts because they frustrate the competitive policies of the Act.

III. THE COMMISSION SHOULD ADOPT REGULATIONS TO REQUIRE THE SHARING OF INSIDE WIRING

Although eliminating the ability of cable companies to enforce exclusivity clauses is necessary to remove a legal barrier to entry, it alone is not enough. As long as the cable operator continues to control the inside wiring of an MDU, it has a *de facto* exclusive contract with the MDU owner. An alternative MVPD that seeks to provide service to an MDU has only two choices: it may overbuild the existing wiring, or it may share existing wiring with the cable incumbent.[17] In most cases, overbuilding is not practical -- and is often not permitted -- because of aesthetic concerns and because of the inconvenience it would cause MDU residents.[18] Therefore, sharing is the only realistic option available to an alternative MVPD. Because an incumbent cable operator is unlikely to agree to share inside wiring with an alternative MVPD, it

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16 Preemption of Local Zoning Regulation of Satellite Earth Stations, *Report and Order and Second Notice of Proposed Rulemaking*, 11 FCC Rcd 5809, at ¶ 3 (1996); *see also* 47 C.F.R. § 25.104.

17 Because the Commission has decided not to adopt DIRECTV's proposal to allow the MDU owner to obtain access to home run wiring prior to expiration of the cable service contract, *see Inside Wiring Order* at ¶ 2, an alternative MVPD cannot gain access to the inside wiring of an MDU without the incumbent cable provider's permission.

18 *See Further Notice* at ¶¶ 25-26.

is necessary for the Commission to adopt a framework that will guaranty that alternative MVPDs can obtain access to the inside wiring. Willey Statement at ¶ 4; Lane Statement at ¶ 3.

A. SHARING OF WIRING IS TECHNICALLY FEASIBLE

Sharing of wiring between high-power DBS and cable television signals is technically feasible and will not cause interference with or reduce the quality of the cable television signal. As explained in the statement of Kesse Ho ("Ho Statement"), attached as Appendix D, the reason that DBS signals and cable signals are compatible is straightforward: they operate on different frequencies. Virtually all cable systems transmit their programming on frequencies ranging from 54 MHz to 550 MHz (and in rare cases, to 806 MHz). DBS programming is transmitted at frequencies between 950 MHz and 1450 MHz. Ho Statement at ¶ 5. This leaves 144 MHz of bandwidth separation, which adequately protects the cable signal against out-of-band emissions. *Id.* at ¶ 6.

The concept of sharing wiring to distribute programming transmitted at different frequencies is not new. For example, VHF and UHF frequencies are often transmitted over a single wire without difficulty. Because VHF frequencies range from 54 to 216 MHz and UHF frequencies occupy 470 to 806 MHz, these two signals do not interfere with each other when transmitted across a single wire. A more recent example is cable modems. Cable modems are able to transmit signals both downstream and upstream without causing interference with the cable programming signal. Interference is avoided by transmitting the upstream and downstream cable modem signals over different frequencies than the cable video programming signal. *Id.* at ¶ 5.

The manner in which the shared wiring system is constructed within an MDU also is relatively straightforward. An MDU receives a DBS signal from a DBS dish, usually located on the roof of the building. From there, the signal is transmitted to a multiswitch, where it is combined with the cable signal. From that point, the combined DBS-cable signal is transmitted by a single wire to subscribers' units. There, diplexers are used to separate the DBS and cable signals for reception by the subscriber. The resident may then subscribe to DBS, cable, or both. This method of sharing wiring in no way interferes with the transmission of the cable programming signal. *Id.* at ¶ 7.

B. SHARING OF WIRING SUCCESSFULLY OCCURS TODAY

The cable interests will undoubtedly attempt to argue that sharing of wiring would cause undue interference with the transmission of their signals. This would be unsurprising. When the Commission sought to foster competition in the market for telephone customer premises equipment, the local telephone monopoly asserted similar concerns about harm to the network.[19] The Commission did not allow the local phone monopoly to use technical excuses to forestall the development of competition. The Commission should adhere to the same standard here.

The fact is that sharing of inside wiring is not just a theoretical exercise; it occurs today without incident. At many MDUs in which the MDU owner owns the inside wiring, the MDU owner has allowed DIRECTV to distribute its programming over the same wiring used to distribute cable programming. Cunningham Statement at ¶ 7. DIRECTV is not aware of any situations in which the sharing of wiring in this manner has caused interference with the cable

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19 *See* Use of the Carterphone Device in Message Toll Telephone Service, 13 FCC 2d 420, 423-25 (1968); Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), *First Report and Order,* 56 FCC 2d 593, 594-98 (1975).

signal.[20] *Id.* at ¶ 8. Of the DIRECTV subscribers who retain cable service, some receive both signals across a single wire today. There is no reason to believe that interference would result simply because the wire is owned by the cable incumbent.[21]

C. REQUIRING SHARING OF WIRING WILL PROMOTE COMPETITION

When the MDU owner owns the wiring inside its building, an alternative MVPD can negotiate with the MDU owner for the right to share that wiring with the incumbent cable provider.[22] Unfortunately, in most cases, it is the cable incumbent that owns the wiring, and the cable incumbent is unlikely to engage in good-faith negotiations with an alternative MVPD seeking to access that wiring. For example, Midland Supplies, Inc. ("Midland"), a DIRECTV system operator operating out of Lincoln, Nebraska, constructed a DIRECTV signal distribution system within an MDU. Although, in this case, the MDU owner owns the building's wiring, the wiring terminates inside a locked box owned by the local cable company. The cable company has refused to provide Midland with access to the box. As a result, seventy-seven DIRECTV subscribers are prevented from receiving DIRECTV programming. Willey Statement at ¶ 2. Moreover, the Commission has chosen not to grant an MDU owner the right to acquire the inside

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20 It is also common for the DIRECTV signal to be combined with off-air signals from a master antenna to enable DIRECTV customers to receive local broadcast signals.

21 Mandated sharing of wiring does not raise any Fifth Amendment concerns. Sharing of wiring does not constitute a "permanent physical occupation" of another's property, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982), nor does it deprive the owner of "all economically beneficial uses" of the wiring. *Lucas v. South Carolina Coastal Comm'n*, 505 U.S. 1003, 1016-19 (1992).

22 If a cable incumbent has obtained the exclusive right to transmit over MDU owner-owned inside wiring, that right should be treated as a prohibited exclusivity provision and rendered unenforceable.

wiring prior to termination of its contract with the cable incumbent.[23] Because cable operators have been able to obtain long-term contracts as a result of their market power, an MDU owner might not be able to switch or add additional providers for several years (or perhaps never in the case of perpetual contracts). Absent overbuilding -- an unrealistic option for many MDUs[24] -- many MDU residents will be forced by cable's bottleneck control over the inside wiring to obtain multichannel programming from the cable incumbent. *See* Willey Statement at ¶ 4; Lane Statement at ¶ 3.

Requiring sharing of wiring will help promote competition by giving MDU residents the ability to access a second MVPD from the same wire. In this way, a subscriber dissatisfied with the programming or the service offered by one provider is not locked in to that provider. Sharing also gives MDU residents the option of receiving service from two MVPDs at the same time, an option that many MDU residents do not have today. Because a substantial share of the multichannel video programming subscribers in this country reside in MDUs, giving those subscribers greater flexibility in choosing their video service provider will foster competition and improve the quality of service available to all subscribers.

D. THE COMMISSION HAS THE AUTHORITY TO MANDATE SHARING OF WIRING

The Commission has authority under Sections 4(i) and 303(r) of the Communications Act to require sharing of inside wiring. Sections 4(i) and 303(r) grant the Commission the authority to adopt rules necessary to carry out the purposes of the

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23 *Inside Wiring Order* at ¶¶ 41, 49.

24 *Further Notice* at ¶¶ 25, 26.

Communications Act.[25] As stated above, one of the purposes of the Communications Act is "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, nationwide and world-wide wire and radio communication service." Congress also has indicated its intent "to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market."[26] Taken together, these provisions of the Communications Act provide the Commission with the authority to adopt such rules as necessary to promote competition among video service providers. Because a cable incumbent's refusal to share its wiring is a significant barrier to competition in the MVPD market and so clearly violates the purposes of the Act, the Commission has the authority to adopt rules to require sharing.

IV. CONCLUSION

The purpose of the Commission's inside wiring rules is to foster competition among MVPDs and to provide residents of MDUs with the ability to choose their preferred video service provider. Today, millions of MDU residents are forced to obtain their programming from the local cable incumbent. By striking down exclusivity clauses in contracts between the MDU owner and the cable incumbent, the Commission will remove a significant legal impediment to competition. However, rendering exclusivity provisions unenforceable will be meaningless unless the MDU owner also has the right to require the cable incumbent to provide the alternative

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25 Section 4(i) grants the Commission the authority to "perform all acts, [and] make such rules and regulations not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 303(r) provides that the Commission may "make such rules and regulations . . . as may be necessary to carry out the provisions of this Act." 47 U.S.C. § 303(r).

26 47 U.S.C. § 548(a); *see also id.* §§ 621(6), 548(b).

MVPD access to existing cable-owned MDU wiring. For these reasons, DIRECTV urges the Commission to adopt the rules proposed in these comments.

Respectfully submitted,

DIRECTV, Inc.

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December 23, 1997

APPENDIX A

STATEMENT OF PATRICK J. CUNNINGHAM

ETHNIC-AMERICAN BROADCASTING CO.
EABC
TELEPHONE: 201-461-6667
FACSIMILE: 201-461-7730

STATEMENT OF PATRICK J. CUNNINGHAM

1. My name is Patrick J. Cunningham. I am the Director of Operations for Ethnic-American Broadcasting Company ("EABC"). I have been Director of Operations for EABC since August 1996. Before accepting my current position, I was a distributor for EABC for its New England Territory and Northwest (Northern California, Oregon, Washington) territory.

2. EABC originated as a subscription radio service dedicated to providing Russian language programming to Russian émigrés, students, and educational institutions. In 1993, EABC expanded its service to include Russian language television programming offered on a premium basis. Today, EABC offers programming in several languages throughout the United States.

3. In Fall 1996, SkyView, a division of EABC, entered into a System Operator Agreement with DIRECTV, Inc. ("DIRECTV") and Sony Electronics, Inc. ("SONY"). Under the System Operator Agreement, SkyView delivers DIRECTV programming and SONY-Brand DSS® equipment to multiple dwelling units ("MDUs") throughout the United States, including New York, Boston, Chicago, Los Angeles and San Francisco. SkyView's service includes all specialized marketing, right-of-entry, installation and customer service activities required to bring DIRECTV programming to MDU residents.

4. In marketing SkyView's service to MDU owners, SkyView often encounters circumstances in which an MDU owner has entered into an exclusive service agreement with the local cable operator. Many of these exclusive agreements have terms of 10 years or longer and have renewal provisions that can extend the term of the agreement indefinitely. Many other exclusive agreements provide that the agreement will continue as long as the cable operator maintains its franchise.

5. These exclusive agreements between the MDU owner and the cable operator have had an adverse affect on our ability to provide SkyView service and DIRECTV programming to MDU residents. Based on our experience, a majority of the MDUs in markets such as San Francisco and Chicago have entered into exclusive contracts between the MDU owner and the local cable company. SkyView has received communication from many MDU owners who have expressed a desire to receive SkyView service and DIRECTV programming expressing concern that allowing SkyView to serve their MDUs would violate the terms of their exclusive contract with the cable incumbent.

6. Based on SkyView's experience and the information it has received from MDU owners, MDU owners that desire to obtain SkyView service often decline to

ONE BRIDGE PLAZA, SUITE 145 • FORT LEE, NJ 07024

obtain it because they are concerned about the litigation expense that they may be forced to bear if the cable incumbent brings an action against them for violation of the terms of the exclusive contract. SkyView has received information that, in some instances, local cable incumbents have expressly threatened to sue MDU owners that have sought to permit SkyView service to their residents. For example, in San Francisco, the local cable company has threatened action if SkyView attempts to overbuild over the cable company's existing wiring. Often, an MDU owner will permit SkyView to offer services if SkyView agrees to indemnify the MDU owner for claims and expenses, including costs and attorney's fees, incurred in litigation arising out of a violation of an exclusivity provision. It would be prohibitively expensive for SkyView to challenge each exclusive contract with respect to each property at which it seeks to provide service. I believe that the only way SkyView will be able to compete effectively for MDU subscribers at these properties is if the FCC decides to restrict the ability of cable operators to enforce their exclusive contracts.

7. I also believe that the ability of SkyView to compete for MDU subscribers would be further promoted if the FCC were to require sharing of wiring. Based on SkyView's experience, sharing of wiring between DIRECTV signals and local cable or master antenna signals is technically feasible. SkyView has installed a shared wiring system to transmit DIRECTV and cable signals over the same wire at several properties in which the MDU owner owns the inside wiring. Currently, however, SkyView cannot share wiring where the wiring is owned by the cable operator.

8. Although SkyView has used shared wiring in several locations, SkyView is not aware of any instance in which the sharing of wiring resulted in a diminution of the ability of an MDU resident to receive the full compliment of cable channels or a lessening of the picture or sound quality of those channels.

9. In conclusion, I believe that, if the FCC decides to restrict the enforcement of exclusive contracts between MDU owners and cable operators and decides to permit sharing of wiring ever where the cable operator owns the wiring, SkyView would be able to provide many MDU residents with a greater choice of video service providers than they have now.

Patrick J. Cunningham

APPENDIX B

STATEMENT OF GARY WILLEY

MIDLAND Suppliers, Inc.

Here Comes the Satellite Express® !!!
4804 Superior Street Lincoln, NE 68504
Phone: 402/466-4000 Fax: 402/466-8728

STATEMENT OF GARY WILLEY

1. My name is Gary Willey. I am President of Midland Suppliers, Inc. Midland has about 17 employees and our home office is in Lincoln, Nebraska. I started Midland in 1982, originally selling C-Band dishes to customers. Over the years, Midland's business has shifted to the sale and installation of commercial V Sat terminals. In addition, Midland is an authorized dealer Music Choice℠ and has expanded into the sale and installation of DSS® equipment and wiring within multiple dwelling units ("MDU's"). Currently, Midland provides satellite related services to customers in Nebraska, Kansas, Iowa, Missouri, and South Dakota.

2. Although our MDU venture is still fairly new, Midland has received contracts to provide DIRECTV programming from subscribers at 1,542 MDU units and 17 different properties. The first property has been built and is ready for activation. Unfortunately, Midland has not been able to activate service because it cannot gain access to the inside wiring of the property. Although, in this case, the property owner owns the wiring, the home run wiring terminates inside a locked cable box that is owned by the local cable company. To date, cable company has failed to allow Midland access to that box. As a result, the first seventy-seven DIRECTV subscribers have been unable to receive programming.

3. Other property owners have approached Midland, expressing a desire to provide their residents with DIRECTV service. However, many of them are hesitant to allow Midland to provide service because they have existing contracts with the local cable provider. According to these property owners, the cable operators have taken a strict stance with respect to inside wiring and have threatened litigation against persons handling that wiring. As a result, property owners are hesitant to allow Midland to provide a competing service at their properties.

4. Midland wants to compete with the local cable systems, but the existence of perpetual and exclusive contracts as well as ignoring requests for access completely hinders our ability to even enter MDU's served by cable. I hope that the FCC will adopt rules that will give property owners a clear idea of their rights with respect to these contracts and to alleviate their concerns about the threat of a lawsuit from the local cable companies. I hope that the rules that the FCC adopts will provide property owners with some control over their wiring, and enable them to allow competing providers access both before and after cable service has been terminated. Further, we believe that the inside wiring should become appurtenant to the property. It is not feasible to install wiring after the structure has been built (which is why cable companies furnish it at that time). Most MDU's were built many years before satellite technology was an viable alternative but this should not allow a cable company the right to limit a tenants choice of available methods of pay television delivery. I believe that by adopting such rules, the FCC will make it easier for companies such as Midland to offer MDU residents more choices from which to select their preferred programming service.

Gary Willey